Legislation referred to
Business Registration Act (Cap 32, 1985 Ed) s 12(1)
Partnership Act 1890 [UK] s 36(1)

Francis Teoh for the second defendant/appellant.
Sin Lye Kuen for the plaintiffs/respondents.

Cur Adv Vult

Chan Sek Keong J: This is an appeal by the second defendant against the decision of the deputy registrar of the district court giving leave to the plaintiffs to enter final judgment in the sum of $13,969 being the balance payable for goods sold and delivered by the plaintiffs to the partnership firm of HP Electronics Centre, from 3 April 1987 to 28 May 1987.

The second defendant's defence was that he was not liable for goods sold and delivered after his retirement from the partnership on 9 May 1987 and that he had caused particulars of his retirement to be registered in the Registry of Businesses. A copy of a document called Instant Information Service obtained in May 1988 was produced but there was no evidence as to when the particulars were lodged. The deputy registrar found that the plaintiffs had no actual notice of the second defendant's retirement and this finding was not challenged.

Accordingly, the only issue before me was whether registration of the retirement of a partner under s 12(1) of the Business Registration Act (Cap 32, 1985 Ed) constituted constructive notice to the plaintiffs. Counsel for the plaintiffs referred me to four local decisions which he contended had settled the point in his clients' favour, viz *Re Siew Inn Steamship Company*;[1] *Re Chop Yew Seong*;[2] *Hup Aik Tin Mining Co* v *Kam Hoy Trading*;[3] and *Tan Sin Moh* v *Lebel Ltd*.[4] Having examined these decisions, I find that none of them was directly concerned with the point in issue. In *Re Siew Inn Steamship Company*,[1] the effect of registration under legislation corresponding to the existing statute was not in issue; the question there was whether the creditor had actual knowledge of the retirement of the relevant partner. In *Re Chop Yew Seong*,[2] the retiring partner had apparently informed the Registrar of Businesses but the retirement was not recorded by the registry officials. In *Hup Aik Tin Mining*,[3] the retiring partner had signed the form of withdrawal to a new partner who had purchased his share but the latter did not send in the said form for registration. In *Tan Sin Moh*,[4] the withdrawal form had been sent to the Registry of Businesses but his retirement was recorded as being with effect from 23 August 1978 instead of 1 February 1976. In each of the last three cases referred to, the creditors were able to rely on the register itself as evidence that each of the relevant defendant was a partner of the firm.

However, there is a statement in *Hup Aik Tin Mining*[3] to support the plaintiffs' argument. There, Barakbah LP said:

> Even if the forms were received by the registrar, in my view, the plaintiffs should have been given notice of the withdrawal by the defendants, and there was no evidence to this effect.

I agree with his statement of the law. It is consistent with s 36(1) of the UK Partnership Act 1890 which provides that:

> Where any person deals with a firm after a change in its construction he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

The expression 'apparent' in s 36(1) does not apparently mean apparent from any statutory record kept in accordance with legislation corresponding to the Business Registration Act but apparent in contrast to a dormant partner. Before partnerships were required to be registered, a dormant partner, who had retired, was not liable for the debts of the partnership accruing after his retirement even though he had taken no steps to inform third parties who were dealing with the partnership. The reason was that he had never been known as a partner to such third parties. The statutory requirement of registration would make it difficult for a dormant partner to plead that he is not known as a partner but it would not make it easier for an apparent partner to plead that registration of the fact of his retirement is notice to third parties who deal with the partnership. In my view, third parties who have dealt with an apparent partner is not deemed to have notice of his retirement by the mere fact of his having notified his retirement in the Register of Businesses.

The appeal was dismissed with costs.

Appeal dismissed.

Solicitors: *Teoh & Co*; *Koh & Yang*.

Reported by *Terence Tan Bian Chye*

Cold Storage Holdings Plc & Ors v The Overseas Assurance Corpn Ltd & Anor

HIGH COURT (SINGAPORE) – SUIT NO 1752 OF 1983
LAI KEW CHAI J
29 MARCH 1988

Insurance – Verbal agreement without cancellation right for insurer – Policy containing cancellation clause for insurer – Whether rectification allowed – Whether broker had knowledge of clause – Whether insured estopped from claiming rectification

Equity – Rectification – Estoppel – Whether insured's action constitute estoppel

The plaintiffs either owned or were otherwise interested in or associated with 'Cold Storage', a shopping complex. They planned to redevelop the building into a bigger complex. For this to be done, site excavation was necessary. This might give rise to

damage to the plaintiffs' existing building and neighbouring buildings. The plaintiffs also wanted insurance cover against third party liability, the usual construction risks and the risk of business interruption. The second defendants were therefore employed to advise and effect the necessary cover, which they did with the first defendants. Later, the first defendants, under condition 3 of the insurance agreements between themselves and the plaintiffs, made through the second defendants, gave seven days' notice of the cancellation of coverage. On the plaintiffs' request, the cancellation was postponed for a short period.

The plaintiffs later commenced an action against the first defendants, claiming that condition 3 in the insurance agreements, in so far as it purported to confer a right on the first defendants to cancel the policies, was not a correct reflection of the agreement and must in equity be rectified by its deletion. Alternatively, the plaintiffs claimed that the policies are to be construed or have implied therein a term that any right of cancellation could only be exercised for reasonable cause, or that the first defendants were estopped from relying on any right of cancellation.

The first defendants in their defence, besides denying the plaintiffs' arguments, also claimed that the plaintiffs, by requesting for a postponement of the cancellation and by asking for a return of the premium, had affirmed the agreements. The first defendants therefore claimed that the plaintiffs were estopped from claiming rectification.

The plaintiffs also claimed, as against the second defendants, that they had breached their contract due to their failure to procure policies of insurance which would provide the required cover and for failing to warn the plaintiffs about the dangers of accepting policies which gave the insurers the right to cancel on seven days' notice.

By an order of court, it was ordered that the issues between the plaintiffs and the first defendants were to be determined before the determination of the issues between the plaintiffs and the second defendants.

Held, accepting the claim for rectification but rejecting the arguments as to a restriction on the right to cancel:

(1) It was not necessary for rectification to be ordered that a complete antecedent concluded contract be present. So long as there was convincing proof of the parties' outward expression of accord, rectification could be ordered.

(2) In the instant case, there was more than common antecedent accord, and that there was an antecedent concluded verbal contract which was reduced into and evidenced by a letter written by the second defendants to the first defendants confirming the contract.

(3) The task of the court was to ascertain the objective intention of the parties, bearing in mind the expressly agreed period of cover, and the fact that the first defendants had a form of policy which was most appropriate, with another which was wholly inapt and which would have derogated from the period of cover as agreed; it would be eminently reasonable that both the first defendants and the second defendants would have reasonably intended and agreed that the form of policy that best fitted the bargain would be used.

(4) The court was satisfied that the second defendants had no knowledge of condition 3 and had worked on the basis of a certain form of policy which was not cancellable. Since there was no direct or constructive knowledge on the part of the second defendants, there could not be any knowledge of the clause to the second defendants' principals, the plaintiffs.

(5) In the light of the finding that the plaintiffs did not know of the existence of condition 3, it is not tenable to argue that they had consciously made a representation by conduct that would give rise to an estoppel against them, that would preclude them from claiming rectification.

(6) The alternative submission of the plaintiffs that the insurance policies should be construed, or have implied therein, a term to the effect that any right of cancellation could only be exercised for reasonable cause had to be rejected. Terms could only be implied to give contracts business efficacy or unless the court could say that both parties must have intended it. Here, the plaintiffs had failed to show the necessity of such a term or show that it was intended by both parties.

(7) The plaintiffs' claim for rectification by deletion of the clause was therefore granted against the first defendants with damages to be assessed and costs.

[*Editorial Note*: The first defendants have appealed to the Court of Appeal vide Civil Appeal No 31 of 1988.]

Cases referred to

1 *Joscelyne* v *Nissen & Anor* [1970] 2 QB 86 (follid)
2 *Shipley Urban District Council* v *Bradford Corp* [1936] Ch 375 (refd)
3 *Crane* v *Hegeman-Harris Co Inc* [1939] 1 All ER 662 (refd)
4 *Crane* v *Hegeman-Harris Co Inc* [1939] 4 All ER 68 (refd)
5 *A/S Ocean* v *Black Sea & Baltic General Insurance Co Ltd & Ors* (1935) 51 Lloyd's Rep 305 (distd)
6 *Bartlett & Partners Ltd* v *Meller* [1961] 1 Lloyd's Rep 487 (distd)
7 *Braund* v *Mutual Life & Citizens Assurance Co Ltd* [1926] NZLR 529 (follid)
8 *The Eureka Insurance Co* v *Robinson Reas & Co* (1867) Supreme Court of Pennsylvania; 56 Pn 256 (refd)
9 *Hawke* v *Niagara District Mutual Fire Insurance Co* (1876) 23 Grant 139 (refd)
10 *Paal Wilson & Co A/S* v *Partenreederei Hannah Blumenthal* [1983] 1 AC 854 (follid)
11 *Woodhouse AC Israel Cocoa Ltd SA* v *Nigerian Produce Marketing Co Ltd* [1972] AC 741 (follid)
12 *Trollope & Colls Ltd* v *NW Metropolitan Regional Hospital Board* [1973] 1 WLR 601 (refd)

Adrian Hamilton QC with *AP Godwin* and *Dora Cheok* for the plaintiffs.

Michael Ogden QC with *Quentin Loh* for the first defendants.

Andrew Rankin QC with *NK Pillai* for the second defendants.

Cur Adv Vult

Lai Kew Chai J: The plaintiffs either owned or were otherwise interested in or associated with 'Cold Storage', a shopping complex and household name which has been operating a supermarket at Orchard Road, Singapore for many years. In 1979 they had plans to re-develop their building into a bigger and new complex. It was also desired that the development would not result in any interruption to their existing retail business. It was proposed that the new complex, later named 'Centrepoint', would be a five-storey building with two basements for carparks. In order to build the basements site excavation was necessary and damage might arise to the plaintiffs'

existing retail complex and to the neighbouring pre-war buildings, particularly those to the east of the site, and these damages might or might not lead to third party liability. Insurances against the other usual construction risks of a building project had to be effected. It was estimated that the project would take three and a half years to complete. Given the Contractors All Risks insurance estimated at $50 million, the usual risks to the public and to the neighbouring properties and the risks of business interruption if the takeover from the existing to the new premises encountered delays, the plaintiffs employed the second defendants ('Lowndes Lambert') as their brokers, to advise and effect the appropriate insurance covers. In due course, Lowndes Lambert arranged the covers.

In September 1979 the first defendants agreed with Lowndes Lambert, as brokers of the plaintiffs, that they were holding the contractors and the plaintiffs covered with effect from 25 September 1979 for a period of four years, plus one year's maintenance in respect of the complex and the cover extended to Contractors All Risks and third party liability in addition to workmen's compensation and common law liability. The first defendants also at the same time agreed to hold the plaintiffs covered for loss of rental and consequential loss due to damage to tenants' property. The first defendants, as was the common practice, spread the risks with re-insurers. The master policies were issued followed by some amendments.

The construction of the complex proceeded. During the currency of the cover, claims were made to the first defendants and there were meetings with the contractors convened with a view to minimising damages and losses arising out of the construction.

By a letter dated 21 January 1982 the first defendants cancelled the Contractors All Risks and third party public liability policies of insurance issued to the plaintiffs by giving seven days' notice from receipt of the notice of cancellation, 22 January 1982. The first defendants acted, as they said, under condition 3 of the policies. At the request of the plaintiffs the first defendants extended their notice to expire midnight 12 February 1982. In February 1982 the plaintiffs succeeded in obtaining replacement cover on the London market through the services of another company of brokers, Heath Langeveldt Rollins Pte Ltd.

In these proceedings the plaintiffs asserted that in the course of a telephone conversation between the first defendants' Mr Jimmy Lim Teong Keng, assistant manager of the first defendants at the material time, and Mr Tsai Swee Hong of Lowndes Lambert, acting on behalf of the plaintiffs, on 24 September 1979 the first defendants had agreed to hold them covered in respect of the relevant risks for a period of four years from 25 September 1979 plus one year maintenance. Accordingly the plaintiffs claimed that (a) condition 3 in the policies, so far as it purported to confer a right on the first defendants to cancel the policies, was not a correct reflection of the agreement and must in equity be rectified by its deletion; or, alternatively, (b) the policies are to be construed or have implied therein a term that any right of cancellation may only be exercised for reasonable cause; or finally, (c) the first defendants are estopped from relying upon any right of cancellation which it might otherwise have had.

In their amended defence the first defendants admitted that by four policies of insurance they had agreed to insure the plaintiffs in respect of their legal liability for bodily injury to any person, and damage to property, caused on or about the Centrepoint project by the fault or negligence of the plaintiffs or of any person in the plaintiffs' service whilst engaged in their trade or business but the first defendants averred that the said policies of insurance were subject to the conditions in the public liability policies, condition 3 of which provided as follows:

> Renewal or Cancellation
>
> ... The Corporation (the first defendants) may cancel this Policy by sending seven days' notice by registered letter to the insured at his last known address provided that the Corporation shall in that event on demand return to the insured a proportionate part of the premium corresponding to the unexpired period of insurance.

The first defendants admitted that by registered letter dated 21 January 1982 they gave the plaintiffs seven days' notice from receipt thereof, 22 January 1982, of cancellation of the public liability policies. They denied that they were thereby in breach and/or repudiation of the said contracts of insurance and claimed that they were entitled so to act pursuant to condition 3 set out above. They also said that at the request of the plaintiffs they extended cover under the public liability policies until and terminated at midnight on 12 Feburary 1982 provided no piling or excavation work was begun during the period of extension.

The first defendants further averred that the plaintiffs by letter dated 18 March 1982 requested a return of premium for the unexpired period of insurance and the first defendants duly tendered the same by letter dated 14 May 1982. Accordingly, they claimed that by requesting extensions to the period of notice and/or requesting a return of premium the plaintiffs had acknowledged and affirmed the contracts of insurance and the terms thereof, including the said condition 3.

By paras 8 and 9 of the defence the first defendants further asserted that the plaintiffs knew or ought to have known that the first defendants' forms of public liability policies contained the cancellation clause which neither the plaintiffs nor their brokers, Lowndes Lambert, had asked to be deleted.

In para 9 the first defendants referred to the written requests of Lowndes Lambert for amendments of the policies and had in October 1979 enclosed with implicit approval the public liability wording of two other companies of underwriters, which contained a condition, numbered 8, which was in terms similar to condition 3.

In view of the facts recited, which were not disputed (though their effect in law was), the first defendants claimed that the plaintiffs had represented to them that they were content with the inclusion of condition 3, and that the parties throughout until April 1982 had acted on the basis that the public liability policies, as amended, represented the agreement between the parties. The first defendants therefore contended that (a) the plaintiffs are estopped from contending that the public liability policies do not represent their true agreement and/or from seeking rectification; and (b) the facts recited above constituted a variation of the contracts of insurance to include condition 3. The alternative assertion that there was a variation was made after both parties had closed their cases and counsel for the plaintiffs was in the midst of his closing submissions.

As against Lowndes Lambert, the plaintiffs are claiming damages for breach of contract or breach of contractual duty both of which were variously put as breach or failure on the part of Lowndes Lambert to procure policies of insurance which would be effective during the anticipated period of construction and/or which would not be open to avoidable disputes and failure to warn of the dangers of accepting policies which give insurers the right to cancel on seven days' notice.

By an order of court dated 26 November 1986 it was ordered that the first tranche of issues only as between the plaintiffs and the first defendants so far as they turn on the question whether there was an agreement for a four year plus one year cover (in which case there should be rectification) and, if not, whether there should be an implied term or estoppel raised against the first defendants, and the issues raised by the first defendants which I have recited, shall be tried first before the issues as against Lowndes Lambert are tried. At the hearing before me, the question of fact whether reasonable cause existed entitling the first defendants to cancel was also not investigated by agreement of the parties, since that question would only arise and should be tried later if by construction or by implication of a term, I hold that the relevant policies should be construed or have implied in them a term to the effect that any right of cancellation may only be exercised for reasonable cause.

The facts

In May and June 1979 Lowndes Lambert were instructed by the plaintiffs to advise on the insurance requirements for the project and to obtain premium quotations from underwriters. Mr Glassock, deputy general manager of the first plaintiffs principally dealt with Mr David Way, the managing director of Lowndes Lambert, who was in turn assisted by Mr Tsai Swee Hong, a director, both of whom were in turn assisted by Lowndes Lambert, London. Lowndes Lambert obtained the insurance particulars from the plaintiffs and by August 1979 they sent completed proposal forms to the first defendants and six other companies of underwriters. The proposal forms related to Contractors All Risks and third party public liability insurances. Underwriters were advised that the existing supermarket would only be demolished when part of the new complex was ready for occupation which was then estimated to take place in 15 to 18 months from the date of construction. They were also told that the quantity surveyors had suggested that 20% of the contract value, given as $50 million, be taken as wages for the project in relation to the underwriters' quotation for workmen's compensation and common law liability risks. Separate proposals were sent with regard to separate risks. As will emerge later, this fact was heavily relied on by the first defendants. With regard to the third party public liability proposal, underwriters including the first defendants were requested to quote the rates for $5m, $10m, and $15m 'unlimited during the period of Insurance'. And the period of insurance (a) until 'handing over' and (b) during maintenance, was stated in the proposal as (a) four years and (b) one year respectively.

On 10 August 1979 the first defendants sent their quotations to Lowndes Lambert. The Contractors All Risks were quoted at $2.15 per thousand on the contract value which gave the premium quote at $107,500 with the period of insurance given as four years plus 12 months maintenance. The rates quoted for third party public liability were $12,500, $15,000 and $16,250 for the limits of $5m, $10m and $15m. The other six underwriters also sent in their quotations. Five of them quoted on the basis that the policies would be on a composite form or on Munich Re Form, that is on a non-cancellation basis. Around this time, Lowndes Lambert advised that the plaintiffs rather than the contractors should take out the necessary insurances to avoid disputes. In a letter dated 14 August 1979 Mr Tsai Swee Hong of Lowndes Lambert advised Mr Glassock of the plaintiffs in the following terms:

> For your information, it is the practice for a contract of this size that principals are to effect the various insurances so as to ensure that they are fully indemnified and to avoid any disputes in the event of a claim. Disputes may arise from the following:
>
> (i) non-payment of premiums by contractors;
> (ii) payment of premiums by contractors to their agents, who failed to remit same to the insurers;
> (iii) agents' receipts may not be entertained by the insurers;

(iv) cancellation of policy documents by insurers due to non-payment of premiums or other factors without the knowledge of the principals.

If insurances are effected by the principals, they would have full control over the premiums by deducting the costs from the contract price.

We would reiterate that we shall deal with your contractors on all claims and other related matters and you would not be involved with insurance matters once the covers have been established unless it is necessary to seek your advice and approval.

As advised previously we have sought quotations from the various insurers on the package cover as follows:

1 Contractors All Risks/Erection All Risks including piling risk.
2 Third party public liability and workmen's compensation on the new complex including demolition of the existing supermarket.
3 To include 'Non-Negligence' coverage as specified in 19(2)(a) of the Singapore Institute of Architects Conditions.
4 Consequential loss resulting from the above operations.

All the quotations were summarised and Lowndes Lambert reported to Mr Glassock after they had clarified with the first defendants. By 10 September 1979 Lowndes Lambert sent to the plaintiffs two folders containing the quotations from the first defendants and another company of underwriters and they recommended that the cover be placed with the first defendants. Lowndes Lambert were verbally instructed to proceed.

On 24 September 1979 Mr Tsai Swee Hong spoke to Mr Jimmy Lim of the first defendants. What transpired between them was followed by a letter dated 25 September 1979 written by Mr Tsai of Lowndes Lambert to the first defendants. It was not in dispute that the letter, which was duly endorsed by the first defendants, was a correct record of the conversation. As this letter is central to the case of the plaintiffs, it has to be quoted in full:

25 September 1979
The Assistant Manager,
(Marketing & Services)
Overseas Assurance Corporation Ltd,
5 Malacca Street,
Singapore 0104

Dear Sir,
Insurance Covering
Cold Storage Complex

We refer to our telephone conversation on 24 September in which we have your agreement to hold the contractors and our clients covered:

Messrs Oh Teck Thye (Pte) Ltd as contractors and/or sub-contractors, Cold Storage Holdings Ltd, Cold Storage (S) Pte Ltd and/or associated and/or subsidiary companies as principals and/or Land Lease (S) Pte Ltd as project managers and/or architects, consultants and/or government of the Republic of Singapore and/or agents and/or representatives for their respective rights and interests

with effect from 25 September 1979 for a period of four (4) years plus one (1) year maintenance in respect of the above project covering the following risks:

1 Contractors All Risks/Erection All Risks – S$50,000,000 Third Party Public Liability – S$15,000,000 any one occurrence and unlimited during the period.
2 Workmen's Compensation and common law liability – 20% of contract value.

As agreed, you are to issue a set of the Master Policies and individual sets and the apportionment of the premiums for each risk and each contract, as follows:

(a) Piling
(b) Building
(c) Demolition

The documents for the piling works are urgently needed by the contractors to enable them to execute the works, however, meanwhile pending the issuance of the policies your confirmation of the coverages by signing a copy of this letter would be much appreciated.

Yours faithfully,
Sgd: Tsai Swee Hong ACII
Director

The Overseas Assurance Corporation Ltd
Sgd: Jimmy Lim

.....
Asst Manager (Marketing & Services)

On 3 October 1979 the master policies, as arranged, were issued. As Mr Glassock was anxious that nothing in the insurance cover should go wrong, Mr David Way wrote to his colleague, a Mr Michael Caley of Lowndes Lambert, London, to advise Mr Glassock on the cover arranged.

As Lowndes Lambert were unhappy with the cover, they wrote to the first defendants on 23 October 1979 seeking the deletions of exceptions 4(c) and (d) from the third party liability policies, to which the first defendants agreed. They sent to the plaintiffs the appropriate endorsements. On the request of Lowndes Lambert, the first defendants on 9 November 1979 sent further endorsements waiving the need of Cold Storage (S) Pte Ltd having an insurable interest on the property insured and for the inclusion of the Urban Redevelopment Authority as an additional named insured.

On 28 February 1980 Lowndes Lambert wrote to the first defendants enclosing notes of advice which they had received from Lowndes Lambert, London on the cover. These notes concerned the wording of the scope of the Contractors All Risks ('CAR') and third party public liability insurances. The first defendants agreed to make limited amendments, although they were unwilling to make any substantial amendments since the risks under the Master Contractors All Risks and third party public liability policies had commenced. As late as 10 June 1980 Mr Michael Caley still advised Mr David Way that there were most certainly still some very substantial areas where the policy cover could be criticized.

On 11 January 1982 Societe Commerciale De Reassurance ('SCOR'), one of the leading reinsurers of the risks, wrote to the first defendants. After referring to a CAR loss due allegedly to the carelessness of the workers in lighting a torch under dangerous circumstances and the alleged lack of information regarding the work involved in the next phase of construction near the Cuppage Road pre-war houses inspite of their request of 9 July 1981, SCOR gave notice of cancellation of the CAR and third party liability policies as from 15 February 1982 or as from the completion of the building then in the final stage of construction.

On 21 January 1982 the first defendants served seven days' notice of cancellation of the third party public liability policies on the plaintiffs and their contractors. On 29 January 1982 the first defendants at the request of the plaintiffs extended the cancellation notice to expire midnight 12 February 1982.

On 5 February 1982 Mr Glassock wrote a letter of complaint to the chairman of Great Eastern Life Assurance Co Ltd which was a major shareholder or associate company of both the first defendants and of the plaintiffs. One of the passages read:

> The policy issued by the first defendants covers the whole period of development and it was subject to a single premium payable on commencement of cover. The policy contained a standard clause permitting the insurance to be terminated by the insurers on seven days' notice, but we assumed that following normal insurance practice this would only be operated in exceptional circumstances.

Nothing came out of the letter and replacement cover was arranged on the London market through another firm of brokers. On 18 March 1982 the plaintiffs requested from the first defendants a return of the premium in respect of the unexpired period of insurance. On 14 May 1982 the first defendants returned the premium of $78,000 (rounded up) to the plaintiffs.

What has been recited by me is gleaned from the contemporaneous documents of and the correspondence which had passed between the plaintiffs and Lowndes Lambert, between Lowndes Lambert, Singapore and London and between Lowndes Lambert and the first defendants. There was no communication directly between the plaintiffs and the first defendants. None of the documents disclosed any discussion between the parties regarding the cancellation clause, nor is there any documentary evidence of any internal discussion about it between Lowndes Lambert, London and Singapore.

Mr Glassock was the principal witness for the plaintiffs and Mr Jimmy Lim was the principal witness for the first defendants. In the circumstances, there was no oral evidence given by either Mr David Way or Mr Tsai of Lowndes Lambert, Singapore. Mr Glassock, who left the service of the plaintiffs in August 1984, testified that at all material times he did not know of the existence of the cancellation clause. He first knew of it only after it was invoked by the first defendants. He explained that he wrote the way he did to the chairman of Great Eastern Life Assurance Co Ltd not because he had known of the cancellation clause before its invocation but because he at the time of writing the letter thought wrongly that he had to accept it as it was plainly there in the policies when he called for them and that his assumption that it would only be invoked in exceptional circumstances was a piece of rationalisation. I have no difficulty in accepting his evidence and I find as a fact that he did not know of the cancellation clause at the material time. Neither did his assistant, Mrs Kong Wang Ying.

Mr Jimmy Lim admitted that he had not discussed the cancellation clause with any person from Lowndes Lambert but on being asked if he would have agreed to the deletion of the cancellation clause he said he would not as it was too high an exposure. He said his guideline was to issue a policy without the cancellation clause only if the limit was $2m or exceptionally $5m in cases involving government authority or government-related companies. I am unable to accept his evidence. He was not forthcoming in his answers; many of his responses were unreasonable and he anticipated counsel for the plaintiffs on many occasions. I am therefore unable to accept his answer to the hypothetical question put to him which I find was a piece of afterthought.

I turn to the forms of policies in use by the first defendants. They had a composite CAR and third party liability policy, a specimen of which was put in as exh P1. It was in all material respects the same as the Munich Re Form. It did not contain any cancellation clause. Section I related to the CAR and Section II related to public liability. Mr Jimmy Lim had even used Section I of exh P1 to cover only CAR for the full period of a project without any cancellation clause and had deleted Section II if he was not extending public liability cover. I find the only reason he had issued separate policies for each of the risks, which contained the cancellation clause, was simply because separate proposals were submitted to his company and not because he would not have done so as the risks were too high. This must have been so because the rates quoted for the progressively higher limits from $5m to $15m were progressively lower. If the risks were higher, as Mr Jimmy Lim claimed, one would expect the quotations to have been progressively higher. The use of separate policies was adopted with no consideration given at all to whether it was permissible to include the cancellation clause.

Rectification

Counsel for the plaintiffs contended that the plaintiffs are entitled to rectification of the policy documents in order to reflect the agreement verbally made between them and

the first defendants and which was correctly recorded in Lowndes Lambert's letter of 25 September 1979 which I have quoted. There it was recorded that the first defendants would hold the contractors and the plaintiffs covered 'with effect from 25 September 1979 for a period of four (4) years plus one (1) year maintenance in respect of (the project) covering the following risks: 1) Contractors All Risks/Erection All Risks – S$50,000,000. Third party public liability – S$15,000,000 any one occurrence unlimited during the period; and 2) workmen's compensation and common law liability – 20% of contract value.' It was submitted that a cancellation clause such as condition 3 was wholly inconsistent with the period of cover as the agreed period of cover of four years from 25 September 1979 plus one year's maintenance which would be drastically cut if such a contract of insurance could be cut down by a seven days' notice given by the insurers.

In this connection, references were made to *McGillivray and Parkinson on Insurance Law* (7th Ed) paras 1071 to 1074 which are reproduced below:

> 1071 Introductory. Where either party to a contract of insurance establishes that the policy formally embodying the terms of the parties' contract does not record the real agreement of the parties, he is entitled to have the policy rectified so that it properly expresses their true agreement. 'If there be an agreement for a policy in a particular form, and the policy be drawn up by the office in a different form, varying the right of the party assured, a court of equity will interfere and deal with the case upon the footing of the agreement, and not of the policy.' If the clerical staff in the insurance office had made a mistake to the prejudice of the company and not the assured, the company would be entitled to rectification of the policy to conform to the real agreement reached by the parties before issue of the policy.
>
> 1072 There is a presumption that a policy which is issued by the insurers and accepted by the assured contains the complete and final contract between the parties. Consequently, the courts' equitable jurisdiction to rectify insurance policies is exercised with restraint inside certain well established limitations, or else it would tend to destroy certainty in insurance business. When a plaintiff seeks rectification, he must establish as a fact that the parties were agreed upon the point in question, and that the policy accidentally fails to record their agreement.
>
> 1073 Prior agreement. It is not necessary for the party claiming rectification to prove that there was a legally binding agreement concluded prior to the issue of the policy, although in many cases he might well be able to do so. He need only establish the fact of a common intention manifested in some form or other as to the form and terms of the contract which would be set out in the policy when issued. In other words, he must prove that a bargain was struck, even if it was unenforceable at the outset. Thus when it is claimed that the true terms of an insurance are contained in a slip used by the brokers to submit to the insurers, it does not matter in principle whether the slip constituted a legally enforceable agreement, as in the case of a Lloyd's slip, or was only a memorandum of the agreement to be concluded later. It follows also that the slip, even if legally binding, can be called in question as being inaccurate.
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> 1074 Evidence of common intention. A strong burden of proof lies upon the party seeking rectification. He must adduce convincing proof of the parties' outward expression of accord or common intention, so that the court is in no doubt that his contention is to be preferred to that of the opposite party alleging that the policy contains their agreement.

I was next referred to *Joscelyne* v *Nissen & Anor*,[1] a leading case on the law of rectification where the Court of Appeal considered differing judicial pronouncements upon what is required before a court of equity would order rectification of a written instrument purportedly evidencing a contract. The case involved an unhappy dispute between a daughter and her father. The father had a car hire business which he carried out partly in his rented house. As the father was under a notice to quit and could not continue his car hire business, both father and daughter negotiated for the father to transfer the business to the daughter. She was to buy the house. It was found as a fact, which was unchallenged, by the county court judge that it was the common intention of them both that if the business and the assets were made over to the daughter she should in return allow her parents to stay on the ground floor of the house, pay him a weekly pension to supplement his old age pension and in addition pay the expenses attributable to the parents' part of the house. The daughter bought the house and she and her husband were living on the first floor. It was also an undisputed fact that these expenses included the gas, electricity and coal bills and also the cost of the domestic help. On 18 June 1964 the parties signed an agreement transferring the business to the daughter. Clause 6 of the agreement provided that the daughter 'shall discharge all expenses in connection with the whole premises 'Martindale', Stanley Road, Enfield aforesaid and shall indemnify (the father) from and against any claim arising in respect of the same.' After the agreement was signed, the daughter paid several of the household bills. But after a dispute, she stopped paying them on the ground that there was no provision in the agreement that she should pay the household expenses. The father brought an action seeking a declaration that she should pay the household expenses and, alternatively, for an order that the agreement should be rectified to include the costs of the household expenses.

Although the county court judge found that there was no antecedent concluded oral agreement between the parties on the question of the payment of the household expenses, he ordered the written agreement rectified to reflect their common intention in relation to the payment of the household expenses.

In her appeal, it was argued that the remedy of rectification was not available unless there was an

antecedent concluded oral agreement on the point or matter which was absent, as the county court judge had found. For the father it was argued that a common continuing intention in respect of a term of the agreement was sufficient.

Russell LJ after an extensive review of several cases which appeared to support the daughter's contentions then referred to the obiter dicta of Clauson J in *Shipley Urban District Council* v *Bradford Corpn*[2] at p 395 which went the other way and which were accepted as correct by Simonds J in *Crane* v *Hegeman-Harris Co Inc.*[3] Simonds J said at p 664:

> Before I consider the facts and come to a conclusion whether the defendants are right in their contention, it is necessary to say a few words upon the principles which must guide me in this matter. I am clear that I must follow the decision of Clauson J, as he then was, in *Shipley Urban District Council* v *Bradford Corpn* [1936] 1 Ch 375, the point of which is that, in order that this court may exercise its jurisdiction to rectify a written instrument, it is not necessary to find a concluded and binding contract between the parties antecedent to the agreement which it is sought to rectify. The judge held, and I respectfully concur with his reasoning and his conclusion, that it is sufficient to find a common continuing intention in regard to a particular provision or aspect of the agreement. If one finds that, in regard to a particular point, the parties were in agreement up to the moment when they executed their formal instrument, and the formal instrument does not conform with that common agreement, then this court has jurisdiction to rectify, although it may be that there was, until the formal instrument was executed, no concluded and binding contract between the parties. That is what the judge decided, and, as I say, with his reasoning I wholly concur, and I can add nothing to his authority in the matter, except that I would say that, if it were not so, it would be a strange thing, for the result would be that two parties binding themselves by a mistake to which each had equally contributed, by an instrument which did not express their real intention, would yet be bound by it. That is a state of affairs which I hold is not the law, and, until a higher court tells me it is the law, I shall continue to exercise the jurisdiction which Clauson J, as I think rightly, held might be entertained by this court.
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> Secondly, I want to say this upon the principle of the jurisdiction. It is a jurisdiction which is to be exercised only upon convincing proof that the concluded agreement does not represent the common intention of the parties. That is particularly the case where one finds prolonged negotiations between the parties eventually assuming the shape of a formal instrument in which they have been advised by their respective skilled legal advisers. The assumption is very strong in such a case that the instrument does represent their real intention, and it must be only upon proof which Lord Eldon, I think, in a somewhat picturesque phrase described as 'irrefragable' that the court can act. I would rather, I think, say that the court can only act if it is satisfied beyond all reasonable doubt that the instrument does not represent their common intention, and is further satisfied as to what their common intention was. For let it be clear that it is not sufficient to show that the written instrument does not represent their common intention unless positively also one can show what their common intention was. It is in the light of those principles that I must examine the facts of this somewhat complicated case.

The Court of Appeal in that case appeared to have accepted the law of rectification as not requiring a complete antecedent concluded contract and that Simonds J was correct: see *Crane* v *Hegeman-Harris Co Inc*[4] per Sir Wilfred Greene MR at pp 72 and 73.

In *Joscelyne* v *Nissen & Anor*[1] Russell LJ concluded at p 98 in the following terms:

> In our judgment the law is as expounded by Simonds J in *Crane's* case with the qualification that some outward expression of accord is required. We do not wish to attempt to state in any different phrases that with which we entirely agree, except to say that it is in our view better to use only the phrase 'convincing proof' without echoing an old-fashioned word such as 'irrefragable' and without importing from the criminal law the phrase 'beyond all reasonable doubt.' Remembering always the strong burden of proof that lies on the shoulders of those seeking rectification, and that the requisite accord and continuance of accord of intention may be the more difficult to establish if a complete antecedent concluded contract be not shown, it would be a sorry state of affairs if when that burden is discharged a party to a written contract could, on discovery that the written language chosen for the document did not on its true construction reflect the accord of the parties on a particular point, take advantage of the fact.

It has to be observed, as was pointed out by counsel for the plaintiffs, that in the instant case there was in fact more than common antecedent accord and that there was an antecedent concluded verbal contract which was reduced into and evidenced by Lowndes Lambert's letter of 25 September 1979.

Counsel for the first defendants submitted that the 'held covered' letter did not contain a provision that there would be no cancellation clause and that there being an ambiguity on this point he contended that the ambiguity should be construed against the plaintiffs under the contra proferentem principle for which he relied on *A/S Ocean* v *Black Sea & Baltic General Insurance Co Ltd & Ors*[5] and *Bartlett & Partners Ltd* v *Meller.*[6]

In answer counsel for the plaintiffs submitted that there was plainly no ambiguity in the letter in that both parties had agreed that the plaintiffs would be covered for four years plus one year maintenance and that the first defendants were not entitled to cut down the period of insurance by unilaterally introducing condition 3 into the policies. Reliance was placed on *Braund* v *Mutual Life & Citizens' Assurance Co Ltd.*[7] The plaintiff, a mechanical engineer, made a proposal to the defendant company on its printed form for a combined life and accident assurance. The cover for 'accident' was defined as '(a) bodily injury caused directly and solely by violent, accidental, external, and visible means.' Just under a month later the defendant company accepted the proposal and premium was paid. Just over a month thereafter the defendant company issued a policy which the plaintiff did not read. He kept it thinking all was well. He did not take any exception to the terms of the policy

and even paid the premium which fell due on the expiry of the first half year of cover. Later in the course of his work he accidentally sustained a sudden wrench which caused him a slight pain on his abdomen. It was shown that he suffered from a left inguinal hernia. As a result he could not work for 12 weeks and three days and he claimed compensation under the insurance which the defendant company refused to pay as condition number 14 in the policy provided that the defendant company was not to be liable 'for hernia, howsoever caused.'

Braund's case[7] is materially similar to the instant case. It dealt with the situation, as here in the instant case, of the effect of a policy which contains a condition which departs from an earlier contract and which is issued after a contract of insurance and where, as here, no exception is taken by an assured. It also dealt with contentions similar to those advanced in this case that the plaintiffs had in the circumstances assented to a policy which included a cancellation clause. Referring to condition number 14 and the arguments, which are similar to those raised here by counsel for the first defendants, Stringer J said at p 532:

> This (condition number 14) is an entire departure from the proposal, which contains no intimation of any such exemptions, and purports to cover accidents generally, and was so understood by the plaintiff. It is clear, therefore, that if, when the policy was forwarded to him, the plaintiff had read and appreciated the extent to which the policy departed from his proposal he could have refused to accept it unless it was made to conform to the proposal. It is also clear that unless the plaintiff by retention of the policy and payment of premiums has precluded himself from such relief the court has jurisdiction to order rectification in the present proceedings: *Collett* v *Morrision* 9 Hare 162; *Griffiths* v *Fleming* [1909] 1 KB 805. Mr Towle's contention was that the policy, containing as it did provisions other than those in the proposal, was in the nature of a new offer of assurance by the company, and that the plaintiff, by his conduct, must be presumed to have accepted that offer, and was therefore bound by the terms of the policy. In support of this contention reliance was placed on those cases where contracts were made by the delivery by one of the contracting parties to the other of a document in common form stating the terms by which the party delivering it will enter into the proposed contract.
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> Referring to such cases, and after examining all the earlier authorities, it was laid down by the Court of Queen's Bench Division in *Watkins* v *Rymill* 10 QBD 176, 188 that 'If the form is accepted without objection by the person to whom it is tendered, the person is, as a general rule, bound by its contents, and his act amounts to an acceptance of the offer made to him, whether he reads the document or otherwise informs himself of its contents or not.'
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> To this general rule, however, as is pointed out in the judgment, there are several exceptions, one of which being that 'the document is misleading and does mislead the person who has taken it,' and the case of *Henderson* v *Stevenson* LR 2 HLSc 470 is given as an illustration of such exception.
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> In my opinion the cases which fall within the general rule laid down are distinguishable from the present case in that they were cases where the only contract between the parties was embodied in the ticket or receipt given by the one contracting party to the other, whereas in the present instance there was an original contract constituted by the plaintiff's proposal and its acceptance by the company. The question is whether, when the policy was sent by the company to the plaintiff, there was not an obligation on the part of the company to call the plaintiff's attention specifically to the conditions in the policy which introduced a variety of exemptions not contemplated by the proposal, in order that he might consider whether or not he would accept a policy which so widely departed from the terms of his original proposal.
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> In *Parkes* v *South-eastern Railway Co* 2 CPD 416 it was held that it was a question of fact whether the delivery of a ticket with conditions endorsed was of itself reasonable notice of such conditions and therefore binding upon the recipient. In the present case I hold that the plaintiff, when he received the policy without any notification of its departure from the terms of his proposal, assumed, and had a right to assume, that it embodied substantially the terms of his proposal, and therefore that he had no reasonable notice of the introduction of the exemptions in question. Furthermore, I am satisfied of the truth of his statement that he did not know the meaning of the word 'hernia', and that if he had read the clause in question he would not have understood its effect in limiting his rights under the assurance.
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> It is the universal practice of insurance companies to prepare both the form of proposal and the form of policy, which are on printed forms ready for use, and it is the duty of such companies to make the policy accord with and not exceed the proposal, and to express both in clear and unambiguous terms: *In re Bradley, Essex and Suffolk Accident Indemnity Society* [1912] 1 KB 415. In the last named case Farwell LJ, in his judgment at p 431, speaking of insurances similar to that in the present case, said: 'Proponents receive a printed form of proposal, and it is reasonable to assume that they read and rely upon it, and they receive in exchange for the form supplied to and required from them a policy which they are entitled to assume, in most cases without careful perusal of the document, to accord with the proposal form.' He goes on to say that there is no objection to the introduction of conditions so long as the intending assured has full and fair notice of them and consents to them, but he says, 'In my opinion it is scarcely honest to induce a man to propose on certain terms and then to accept that proposal and send a policy as in accordance with it when such policy contains numerous provisions not mentioned in the proposal, which operate to defeat any claim under the policy, and all the more so when such provisions are couched in obscure terms.'
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> As stated in *Welford on Accident Insurance* p 93, 'Acceptance of the new terms by the assured is not to be implied from the mere fact that he does not object promptly to the policy as issued, though a delay in taking objection after he knows, or could with reasonable diligence have discovered, that the policy was incorrect may lead to the inference that he has accepted them.'
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> Having regard to the observations of Farwell LJ, already cited, which I think are apposite to the present case; to the failure of the company to indicate in any way that the policy was radically different from the terms of the proposal; to the right the plaintiff had to assume that the policy conformed substantially to his proposal; and to the difficulty of a man in the plaintiff's position deciphering and understanding the

introduced exemptions printed in exceptionally small type and containing technical terms, I have no hesitation in concluding that not only did he not accept, but that he did not understand the new terms embodied in the policy. The result is that the policy is rectified as before mentioned, and that on such rectification the plaintiff is entitled to the amount claimed on the action.

I now come to another branch of the arguments of the first defendants against granting the plaintiffs the remedy of rectification. Here, it was submitted that where, as here, it was agreed that master policies 'and individual sets for each risk and each contract ...' be issued without all the terms being specified in a 'held covered' agreement, the contract of insurance would be upon the terms and conditions in the insurer's standard form of policy for the risk in questions. For this submission reliance was placed on *The Eureka Insurance Company* v *Robinson Rea & Co*[8] and *Hawke* v *Niagara District Mutual Fire Insurance Co.*[9] On the facts, counsel for the plaintiffs submitted that Lowndes Lambert had assumed that the policies to be issued would be in the first defendants' combined standard form for CAR extended for third party public liability. On the other hand, counsel for the first defendants submitted that Mr Jimmy Lim acting on behalf of the first defendants had intended the policies to be in their separate free-standing public liability policies; the difference between the two forms being that the former had no cancellation clause whereas the latter had the cancellation clause. Before I deal with the approach I should adopt in law, I should make known my findings on the evidence so far as the forms of policies and the intention of the parties were concerned. With regard to the forms of policies, I find that the first defendants had two sets of standard forms, namely the composite form incorporating both CAR and third party public liability with no cancellation clause as in exh P1, much along the lines of the Munich Re Form; and, secondly, separate CAR and third party liability policies each of which contained condition 3. With regard to the intention of Mr Jimmy Lim in relation to the form of the policies, it is not true that he intended to issue cancellable policies. I find that he simply did not think about it. I also find that the issue of separate policies were done rather mechanically and that their issue was simply in response to the fact that separate proposals were submitted to them, which was wholly at variance with the reality of the situation where Lowndes Lambert were plainly seeking a package insurance cover for the entire development project, valid over the estimated construction period with a one-year maintenance. So far as Lowndes Lambert were concerned, I find as was truthfully stated by Mr Tsai Swee Hong in Lowndes Lambert's letter of 23 October 1979 that they did not expect to be issued separate public liability policies as they had not realised that such separate public liability policies would be issued. In the same letter they further did state quite truthfully that they had not indicated that the policy should be 'based on the extension of the Munich Re policy form wording.'

What was the agreement of the parties so far as the form of policies was concerned? I see my task here is to ascertain objectively what the parties had intended. The subjective understandings and intentions of either party which are entertained or locked in the inner recesses of their minds are not the tests: see *Paal Wilson & Co A/S* v *Partenreederei Hannah Blumenthal*[10] where what Lord Diplock said at pp 915-6 are equally applicable when it comes to the question of whether a particular term is agreed:

> To the formation of the contract of abandonment, the ordinary principles of the English law of contract apply. To create a contract by exchange of promises between two parties where the promise of each party constitutes the consideration for the promise of the other, what is necessary is that the intention of each *as it has been communicated to and understood by the other* (even though that which has been communicated does not represent the actual state of mind of the communication) should coincide. That is what English lawyers mean when they resort to the Latin phrase consensus ad idem and the words that I have italicised are essential to the concept of consensus ad idem, the lack of which prevents the formation of a binding contract in English law.
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> Thus if A (the offeror) makes a communication to B (the offeree) whether in writing, orally or by conduct, which, in the circumstances at the time the communication was received, (1) B, if he were a reasonable man, would understand as stating A's intention to act or refrain from acting in some specified manner if B will promise on his part to act or refrain from acting in some manner also specified in the offer, and (2) B does in fact understand A's communication to mean this, and in his turn makes to A a communication conveying his willingness so to act or to refrain from acting which mutatis mutandis satisfies the same two conditions as respects A, the consensus ad idem essential to the formation of a contract in English law is complete.

Bearing in mind the expressly agreed period of cover, which was known by both parties as straddling the period of the estimated construction, and the fact that the first defendants had a form of policy which was most appropriate, with another form which was wholly inapt and which would have derogated from the period of cover as agreed, it seems to me eminently reasonable that both Lowndes Lambert and the first defendants would have reasonably intended and agreed that the form of policy that best fitted the bargain would be used.

I should now consider the first defendants' contention that Lowndes Lambert knew or ought to have known of condition 3 and that such direct or constructive notice must be taken as the knowledge of their principals. It was stressed that Lowndes Lambert were experienced insurance brokers of at least 20 years' standing and that there was evidence that they had considered at least certain terms of the policies and had, indeed, requested for amendments some of which were acceded to by the first defendants. On the evidence, I am satisfied that they

had no direct knowledge of condition 3; none of the correspondence produced in court which passed from or to Lowndes Lambert made any reference to condition 3 of the policies. They did study and request for amendments but I find that such study and amendments related exclusively to the wording of the scope of insurance and to the insured parties of the policies. Further, Lowndes Lambert had worked on the basis of the Munich Re Form which was not cancellable. In all the circumstances I am unable to impute on them any constructive notice of condition 3 before its invocation. Again it was observed on behalf of the first defendants that the plaintiffs had requested for extensions after the notice of cancellation and that at no time did the plaintiffs nor Lowndes Lambert make any complaint about the existence of condition 3. On these and other facts the first defendants contended that the plaintiffs had affirmed the policies which included condition 3. I have to reject this submission as without merit.

The first defendants also raised the related plea of estoppel and contended that on the same facts the plaintiffs had represented to them that they (the plaintiffs) were content with the inclusion of condition 3. In the light of my findings that the plaintiffs did not know of the existence of condition 3 it is not tenable to conclude that they had consciously made the representation by conduct: see *Woodhouse AC Israel Cocoa Ltd SA* v *Nigerian Produce Marketing Co Ltd*[1] which required a representation to be clear and unequivocal to warrant the operation of an estoppel.

For these reasons the plaintiffs are entitled to rectification and judgment will be entered for the plaintiffs against the first defendants with damages to be assessed and costs.

Before I part with this judgment, I should consider the alternative submission of the plaintiffs. They submitted that if (which they denied) condition 3 was agreed or otherwise was subsisting by reason of estoppel or variation the policies are to be construed, or have implied therein, a term to the effect that any right of cancellation may only be exercised for reasonable cause. They again stressed that the whole object of the insurances taken out with the first defendants was to provide cover for the estimated duration of the Centrepoint project. Some of the applicable principles were re-affirmed in the leading case of *Trollope & Colls Ltd* v *NW Metropolitan Regional Hospital Board*[12] at pp 606D-610D per Lord Pearson, at p 613 bottom to p 614F per Lord Cross and may be summarized as follows:

(a) no term can ever be implied which would conflict with an express term;
(b) no term can ever be implied just because, in the light of subsequent events, it may seem reasonable and desirable;
(c) a term will only be implied where it is essential, that is, without it, the agreement would be without 'business efficacy'; and
(d) no term will be implied unless the court can say that both parties must have intended it.

Plainly the plaintiffs were unable to show the necessity to imply the term nor could this court say that the term canvassed on behalf of the plaintiffs must have been intended by both parties. It has to be noted that a cancellation clause such as condition 3 was not unusual in the insurance industry and it had been acceptable because a replacement cover could be arranged within a reasonably short period as had happened in this case, although the premium might be considerable. It is therefore quite plain that it is not necessary to work the policies by implying a term to cut down the insurers' power of cancellation. I am therefore unable to construe the policies or imply into them the term as suggested by the plaintiffs.

Order accordingly

Solicitors: *Godwin & Co*; *Cooma Lau & Loh*; *Niru & Co.*

Reported by *Terence Tan Bian Chye*

Goh Chong Ying v Public Prosecutor

HIGH COURT (SINGAPORE) – MAGISTRATE APPEAL NO 123/86
CHUA J
23 MARCH 1989

Evidence – Accomplices – Corroboration of each other – Inconsistencies of evidence – Interference with trial judge's findings – Penal Code (Cap 224, 1985 Ed), ss 34 & 420 – Prevention of Corruption Act (Cap 241, 1985 Ed), ss 5(b), (c) & 6B – Evidence Act (Cap 97, 1985 Ed), ss 116 illustration (b) & 135

Criminal Procedure – Trial judge's findings – Appeal court's overturning

Criminal Law – Corruption – Question of fact – Prevention of Corruption Act (Cap 241, 1985 Ed), ss 5(b), (c) & 6B

The appellant was charged and tried with FSS on two charges of cheating the HDB, a statutory board, and with giving a corrupt gratification to PP. The appellant was also charged with and tried for offering a corrupt gratification to TYK. Although FSS was acquitted on both charges, the appellant was convicted on all three charges. He was sentenced to 18 months' jail on the first charge and to 12 months' jail on each of the remaining two charges. The sentences on the first two charges were to run consecutively. The appellant appealed against his convictions and sentences. One of the grounds of appeal was that the trial judge received as relevant PP's testimony that the appellant had bribed him on a previous occasion, for which the appellant was not charged. It was also alleged that the two main prosecution